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Now comes President Gompers, of the National Federation of Labor, and overrules Judge Woods's decision in the Debs case. Gompers does not cite any authorities.

The judge, prosecutor and other officials of Boone county declare that the bill of charges against Marion county in a murder case recently sent there on change of venue was strictly correct and quite reasonable. It is to be hoped no important items were omitted.

It is striking proof of the danger of intrusting the Democratic party with power that the features of the Carlisle currency plan which all conservative financiers regard as fatal defects are the very ones which give it most strength in the present House.

No pooling arrangement of railroads can be entered into until the contract has been submitted to the Interstatecommerce Commission and approved by it, and any arrangement for pooling which that commission disapproves after it has been in force may be set aside after twenty days' notice.

There are indications that hypnotism as a factor in crime may be overworked. In the case of the murder of Miss Ging. at Minneapolis, it was suggested that she was induced to hold clandestine meetings and go driving with men at unseemly hours by means of hypnotism, and now it is suggested that Seeley, the defaulting cashier of the New York Shoe and Leather Bank, was led into criminal practices by the same means. There is no necessity of this introduction of extraordinary and mysterious power to account for crime. Enough is already known to show that Miss Ging had been leading a double life for some time, while Seeley, by his own confession, was a hard drinker, a regular frequenter of horse races and a free bettor. The only hypnotism in his case was that of a weak and demoralized character. As long as the ordinary passions and vices of men and women continue to have full sway it is not necessary to account for crime on the theory of hyp-

# JUDGE WOODS'S OPINION.

Public interest in the great railroad strike of last summer, which has yielded to the course of later events, wil' be revived by the decision of Judge Woods in the case against Debs and others. The importance of the principles involved and the ability and exhaustiveness of the opinion are sufficient reason for its publication in full. It is evidently the result of careful thought and much labor on the part of the Judge, and is the st judicial exposition that has been made as to the scope of the conspiracy act of 1890 and the right of the national government to protect interstate com-

The Judge devotes considerable space to the question of jurisdiction and his poses of it finally. He shows that on general principles and by legal precedents a forcible interference with public traffic is such a violation of public rights as constitutes a public nuisance. and justifies the courts in restraining it. He holds, further, that the government has such a property right in the mails and so direct an interest in their transmission that it may interfere to protect the moving of interstate trains, and that no special legislation is necessary to authorize such action. Arguing from the acknowledged right of the federal courts to extend protection to commerce on the rivers, he holds that they may exercise the same jurisdiction over commerce on the railways. His conclusions on this point leave nothing further to be said on the question of jurisdic-

The Judge's exposition of the conspiracy sections of the law of 1890 is equally convincing. It was contended by counsel for the defendants that this law was aimed solely at combinations of capital, and that it was never intended to include combinations of labor. Judge Woods thinks differently. He holds that poor men have no more right to combine or conspire together in restraint of trade or the interruption of interstate commerce than rich men have. The question of conspiracy depends on the character of the design. and not of those who engage in it, and any proposed restraint of trade, though it be in itself innocent, if it is to be accomplished by conspiracy, is unlawful. The act itself being illegal, the social status or occupation of those who engage in it, or their motives in doing so cannot make any difference. The Judge makes this point very clear, as he does also the distinction between the right to strike and the right to use violence. "The right of men to strike peaceably." says the court, "and the right to advise a peaceable strike, which the law does not presume to be impossible, is not questioned. But if men enter into a conspiracy to do any relawful thing, and in order to accompilsh their purposes advise workmen to go upon a strike,

knowing that violence and wrong will be the probable outcome, neither in law nor in morals can they escape responsibility."

Applying these principles to the case at bar, the court finds that Debs and his coworkers did conspire together for the restraint of trade, that they became morally and legally responsible for the results of their orders and acts, and that by adhering to their policy in defiance of the restraining order of the court they placed themselves in contempt. Debs is accordingly sentenced to six months in jail and Vice President Howard, Secretary Keliher, Treasurer Rogers and Directors Burns, Elliott, Hogan and Goodwin each to three months. These sentences are not vindictive, and yet they are sufficient to vindicate the law and the dignity of the court. The dispatches indicate that the defendants were glad to get off so easily. An appeal may stay the execution of the judgment, but it is not at all likely to reverse it. The decision will stand as a final exposition and enduring vindication of the law.

### THE COUNCIL'S INVESTIGATION.

The City Council is to be commended for its action in appointing a committee to investigate the charges made against certain city officials. It would have failed to discharge a public duty had it neglected to have done so. Thus far nothing that can be regarded as testimony has been elicited by the committee; but at the last meeting two men made statements which involve charges, and which rest upon the testimony of Mr. Stewart, a member of a Kokomo stone company. This being the case, the committee will certainly have Mr. Stewart for its next witness, and if not for the next, at as early a day as possible. This is due to the accused if they are innocent, and it is due to the people of Indianapolis and to the clean management of public affairs, if the charges shall be sustained by the testime that important witness, that the man or men proven to be corruptly implicated shall be exposed and The time has the. necessity of lous integrity in the management of public affairs emphasized. The accepting of "per cents." by officers or of any valuable consideration from contractors is a dishonest practice, even if it is said to be quite general.

By this statement the Journal does not mean to be understood to intimate that the officials named by Messrs. Bash and Humphrey are guilty of the charge which their testimony contained, but i does mean to say that if dishonest transactions are going on in any branch of city, county or State government, those who are guilty of them should be turned out of office and over to the grand jury. The accepting of "per cents." or other consideration from contractors by pubc officers is the accepting of bribes There is so general an opinion that such things are commonly done by public officers that there has come to be a feeling that what is so commonly believed to be done cannot be so very wrong. It is time to correct such a demoralizing sentiment and to show that such irregularities are crimes by making examples of those clearly shown to guilty of them. To that end, the City Council should take steps to have the recent transactions of the School Board investigated by a committee of the Legislature, as well as to see that the investigation upon which it has entered shall be pressed with vigor to the end.

In this connection, the Journal may say that it does not approve the secret informal conference which the Board of Public Works has had with the representatives of the Broad Ripple Railway Company recently. Doubtless nothing improper was done; but the holding of a conference with any corporation so intimately connected with the people from which the public is debarred is open to serious objection, and is liable to bring the board into disrepute. Such a board owes it to the city to avoid the suspicion which such a secret conference with corporation's officers, who are seeking favors from the city, naturally creates.

# BUBBLES IN THE AIR.

Why is it when a maiden young The men all think it such a sin, And the girls all think it funny?

"This play," said the city nephew, "was stolen from the French.' Uncle Josiah made a grab for his hat

"By gosh, I'm goin' to git out of here," aid he. "I don't want to be mixed up as an accomplice in no robbery."

Riot. The crowd surged about the locked doors

f the bazaar. "What is up?" asked the blind beggar. The deaf and dumb beggar whispered breathlessly: "There is a bargain sale going on inside, and the Bashaw's eight hundred wives are attending it. They do say that the carnage in there is simply ap-

Just. The weeping relatives gathered around the Governor's chair, but that official re-

"No." he said to the mother, "I may consider your boy's pardon, but it is better for him that he remain for four or five months more. If I were to let him out now, he would be just in time to contract late case of 'Sweet Marie.' " They saw the justice of the contention

and withdrew.

Fidelity in Public Office. To the Editor of the Indianapolis Journal: Returning home for a few days after more than a year's absence I have been delighted to see how Indianapolis has grown and improved in spite of hard times. We have to live elsewhere for a while in order to realize what a beautiful city the people here are building for themselves. That which interests me most, however, is the new interest in public affairs—the determination to hold officials to a strict account. The Journal is doing first-rate work in this direction. It is clear that a Republican elected to office who in these times allows himself to think of anything but a faithful service of the public is, from a party standpoint, what they call down in North Carolina "a plum ijit," Of course, from the standpoint of general decency he should be classed with other dirty scoundres.

HANFORD A. EDSON.

#### dianapolis, Dec. 14. To Preserve the Flag.

Representative Linton to-day introduced by request, a bill making it untawful for any person to print, stamp or impress any or devices upon the flag of the states or any representation thereon, provided, however, that any national or State regiment or Grand Army post shall have the right to put upon the flag the number and location of such. The idea of the bill is to prevent the flag from being rated with advertising devices. A number of flags with advertisements printed upon them have been sent to Mr. Linton to show to the committee when they take the bill up for consideration.

GUILTY AS CHARGED

(Concluded from First Page.) tinuance of public nuisances this course is enerally pursued." (State vs. Dayton & E. R. Co., 36 Ohio St., 434; People vs. Vanderbilt, 28 N. Y., 396.)
"Sec. 764. When proceedings are had to enjoin a public nuisance, such as the polution of a river by a board of municipal officers in violation of an act of parliament under which they are acting, a distinction is drawn as to the necessity of proving an actual injury between the case of an information filed by the Attorney-general in behalf of the public and a bill filed by private citizens in their own behalf. And in the former case it is held to be unnecessive for the Attorney general to establish sary for the Attorney-general to establish any actual injury, the statute having pro-hibited the act complained of. Section 745. It is, however, to be observed that the fact that the commission of the threatened act, which it is sought to en-join as a nuisance, may be punished crim-inally as such will not prevent the exercise of the restraining power of equity." (People vs. St. Louis, 5 Gilm., 351; Attorneygeneral vs. Hunter, 1 Dev. Eq., 12; Gilbert vs. Maris C. & B. Company., 4 Halst. Ch.,

To the same effect in 2 Daniel's Ch. Plead

& Prac., 4th Ed., p. 1635, it is said: "In cases of public nuisance, properly so-called an indictment lies to abate them and to prosecute the offender, but an information will also lie in equity to stop the mischief and to restrain the continuance of it; and among the cases cited in support of the text are Attorney-general vs. Nichol 16 Ves. 338; Attorney-general vs. Forbes, M. & C., 123; Attorney-general vs. Cambridge Consumers' Gas Company, L. R. 6 Ep., 282; Attorney-general vs. Staffordshire Copper Company, 1 W. N. 258; Bunnell's appeal, 69 Pa. st., 59. See also Craig vs. the People, 47 Ill., 487; Attorney-general vs. rallroad companies, 35 Wis. 527; Attorney-general vs. city of EauClaire, 35 Wis., 400.

The Supreme Court of the United States has spoken on the subject. In the case of the Mayor of Georgetown vs. the Alex-andria Canal Company, 12 Peters, 91, 98, where an injunction was sought against obstructing the navigation of the Potomac river, the court said: "Besides this remedy at law it is settled that a court of equity may take jurisdiction in cases of public nuisance by an information filed by the Attorney-general. This jurisdiction seems to have been acted on with caution and hesitancy. Thus, it is said by the chancellor in 18 Ves. 217, that the instances of the in-terposition of the court were confined and rare. He referred, as to the principal au-thority on the subject, to what had been done in the court of exchequer upon the discussion of the right of the attorney general by some species of information to seek, on the equitable side of the court relief as to nuisance and preventive re-lief. Chancellor Kent, in 2 Johns. Ch. 382, remarks that the equity jurisdiction in cases of public nuisances, in the only cases in which it had been exercised, that is, soil, had jain dormant for a century and a half; that is, from Charles I down to the year 1795. Yet the jurisdiction has been finally sustained upon the principle that equity can give more adequate and com-plete relief than can be obtained by law. Whilst, therefore, it is admitted by all that it is confessedly one of delicacy and accordingly, the instances where it is exercised are rare, yet it may be exercised n those cases in which there is eminen danger of irreparable mischief before the the law can reach it."

also the opinion in State of Pennsylvania vs. Wheeling, etc., Bridge Company, 13 How. 518, where a bridge across the Ohio river was held to be a public nuisance and ordered abated at the suit of the State of Pennsylvania. "A PECULIAR CASE." But, while this jurisdiction of the English High Court of Chancery and of the equity courts of the several States of the Union is not understood to be disputed by counsel for the defendants, they do insist that, in the absence of legisation by Congress conferring the authority, the federal courts can do nothing for the protection of the highways of interstate commerce, whether upon land or water. The following language is cited from the opinion in Transportation Company vs. Parkersburg, 107 U. S., 691, in which State of Pennsylvania vs. Wheel-

ing, etc., Bridge Company, it may be ob-served, is declared to be "a peculiar case:" "Now, wharves, levees and landing places are essential to commerce by water, no less than a navigable channel and a clear river. But they are attached to the land; they are private property, real estate; and they are, primarily, at least, subject to the local State laws. Congress has never yet interfered to supervise their administration; it has hitherto left this exclusively to the States. There is little doubt, however, that Congress, if it saw fit, in case of prevail ing abuses in the management of wharf property-abuses materially interfering with the prosecution of commerce-might interpose and make regulations to prevent such abuses. When it shall have done so, it will be time enough for the courts to carry its regulations into effect by judi cial proceedings properly instituted. But until Congress has acted the courts of the United States cannot assume control over the subject as a matter of federal cognizance. It is Congress, and not the judicial

lepartment, to which the Constitution has

given the power to regulate commerce with

foreign nations and among the several

States. The courts can never take the ini-

And from Willamette Iron Bridge Company vs. Hatch, 125 U. S., 1, the following: "The power of Congress to pass laws for the regulation of the navigation of public rivers, and to prevent any and all obstruclons therein is not questioned. But until it does pass some such law there is no com law of the United States which prohibits obstructions and nuisances in navigable rivers, unless it be the maritime law, administered by the courts of admiralty and maritime jurisdiction. No preceden however, exists for the enforcement of any such law; and if such law could be enforced (a point which we do not undertake to de cide), it would not avail to sustain the bill in equity filed in the original case. There must be a direct statute of the United States in order to bring within the scope of its laws, as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the es. Such obstructions and nuisances are offenses against the law of the States within which the navigable waters lie, and may be indicted or prohibited as such; but they are not offenses against United States laws which do not exist; and none such exist except what are to be found on the statute book. Of course, where the litigant parties are citizens of different States the Circuit Court of the United States may take jurisdiction on that ground, but on no other. This is the result in so many cases, and expressions of opinion by this court, that it is almost superfluous to cite au-thorities on the subject. \* Of course any interference with the operations, constructions or improvements made by the general government, or any violation of a port law enacted by Congress, would be an offense against the laws and authority o the United States, and an action or suit brought in consequence thereof would be one arising under the laws of the United States. But no such violation or interference is shown by the allegations of the bill in the original suit in this case, which simply states the fact that improvements have been made in the river by the government, without stating where, and that Portland had been created a port of entry In the case of Escanaba Company vs. Chi cago it was said: 'As to the appropriations made by Congress, no money has been expended on the improvement of the Chicago river, above the first bridge from the lake, known as the Rush-street bride. No bridge therefore, interferes with the navigation of any portion of the river which has been thus improved. But if it were otherwise is not perceived how the improvement o the navigability of the stream can affect the ordinary means of crossing it by fer-ries and bridges.' 107 U. S., 690. In the present case there is no allegation, if such an allegation would be material, that any im

provements in the navigation of the Wil lamette river have been made by the government at any point above the site Accordingly, notwithstanding the vision in the "Act for the admission of Ore gon into the Union," that "all the navigable waters of said State shall be common high ways and forever free," it was held in that case that the bridge which it was sought to move was not an offense against the United States, in the absence of direct egislation bringing obstructions and nuisances in navigable streams within the scope of national law. JURISDICTION OF FEDERAL COURTS In reply to this position of the defense

reference is made to the act to regulate commerce, as amended by the act of March 2, 1889 (25 U. S. Stat., 855), and it is contended that by force of the provisions of that statute, passed in exercise of the power conferred on Congress by the Constitution, "to regulate commerce among the several States," the national control has been extended over the channels and agencies of interstate commerce, including railways as well as navigable waters, and that out of this legislation, whatever had been the rule before, has arisen by necessary implication the jurisdiction of courts, in accordance with principles of equity, to protect that commerce against interference or obstruction. The right of the federal government to obtain the injunction is also asserted upon he ground of property right in the mails. That the Nation owns the mail bags is, of course, beyond dispute, and that it pays large sums annually for the carrying of the mails upon the railroads is well understood. In Searight vs. Stokes, 3 How, 151,

where the question was whether vehicles carrying the mails were property of the United States," and therefore exempt from tell on the Cumberland road in Pennsylvania, the Supreme Court said: "The United States have unquestionably a property in the mails. They are not mere common carriers, but a govern-ment, performing a high official duty in holding and guarding its own property as well as that of its citizens committed to its care; for a very large portion of the letters and packages conveyed on this road, especially during the session of Congress, consists of communications to or from the officers of the executive department, or members of the Legislature on public serv-ice or in relation to matters of public con-

It is said, on the contrary, to be easy "to show that at common law jurisdiction of the chancery on information of the Attorney-general to restrain a purpresture or nuisance rests on the idea that the king owns the land whereon it exists," and it is doubtless true that in the cases where the jurisdiction was invoked the king was the owner of the land, because the land under navigable waters in England has always belonged to the crown; but the object of the suits has always been, not to vindicate the title to the land, which could have been done by an action of ejectment, but to prevent or remove obstructions to navigation, which required the prompt and efficient methods of equity; and it is not to be believed that if in England, as along the fresh-water rivers of this country, the title of lands under the water had belonged to the riparian owners, the same jurisdiction would not have been exercised for the protection of the public right of naviga-tion. The public interest in concerned in the unobstructed use of the water, and it is sticking in the mud to say that the right to protect that use is dependent upon the ownership of the underlying soil. If, however, the jurisdiction in such cases must be held to rest upon some legal title or property right, which by fiction shall be deemed to be worthy of equitable protec-tion, or to afford a basis of jurisdiction for protecting incidental rights, it would seem that the property which the government has been declared to have in the mails and its unquestioned ownership of the mail bags might well be deemed sufficient for the purpose. As Justice Brewer said in U. S. vs. W. U. Tel. Co., 50 Fed. Rep. 28, 42, "the dollar is not always the test of real interest. It may properly be sacrificed if anything of higher value be thereby at-

WATERWAYS LIKE RAILWAYS. "But," say counsel, "this whole subject is utterly foreign to the question in this case. · · · Waterways are not railways. They are free to all comers and are not the subject of private ownership nor control, but only of municipal regulation by public authority. (Lake Front Case, 146 U. S. 387.) The control of the railway is primarily with the company that owns and operates These great interests are entirely able to cope with any interference with their property. If they be held, in a high sense, as trustees for the public, why should equity entertain a suit by the beneficiaries of this trust until the trustees have proved recreant? These companies own the land over which their lines run or a right of way in perpetuity, and though charged with public duties, are still private pecuniary corporations operated for gain. As to all local matters, namely, the speed of trains, stopping at crossings, elevation of tracks and things of that character, they are subject to local or State regulation. This could not be were the power of Congress exclusive as in the matter of interstate rates. (Wabash Ry. vs. Illinois, 118 U. S.,

It is of course true that waterways are not rail ways; that the latter and the title to the land under them are owned and controlled, under legal limitations, by companies which operate them for gain; but so are the boats which ply the rivers and lakes of the country, and I see no reason in any of the suggestions advanced for saying that the courts may give to commerce on the rivers a protection which they may not extend to commerce on the railways. The railroad companies are clothed with the power of eminent domain to enable them to acquire lands necessary for their purposes, because the proposed use is for the public benefit. To the extent of the share which the companies have in interstate commerce they hold their lands and rights of way for the benefit of the general public and subject to the national control. "For this purpose," to use the exvs. Philadelphia, 3 Wall. 713, in respect to navigable waters, "they are the public property of the Nation and subject to all requisite legislation of Congress." But while the reasons to justify, on the grounds considered, the issuing of the inunction for the purpose of protecting against obstruction or interruption, either the mails alone or interstate commerce, of which the carrying of the mails is a part, are strong and perhaps ought to be accepted as convincing, there seems to be no precedent for so holding, and the responsi-

offity of making a precedent need not now be assumed While, however, the point is not decided the authorities on the subject have been brought forward so fully because, in part, of their bearing upon the question, now to be considered, whether or not the injunction was authorized by the act of July 2, 1890. It was under that act the order was asked and was granted; but it has been seriously questioned in this proceeding, as well as by an eminent judge and by lawyers elsewhere, whether the statute is by its terms applicable, or consistently with constitutional guarantees can be applied, to cases

# CONSPIRACY AND CONTEMPT.

Statutes Relating to Restraint o Trade and Duty of Courts. It is admitted in one of the briefs for the defendants, and the authorities already quoted clearly demonstrate "that were Congress to declare that the United States might maintain a bill to enjoin the obstruction of interstate commerce on railroads engaged therein, where such obstructions amounted to what, on a public highway, would be a public nuisance, such legislation would be admissible." Such an act, not oing beyond the scope of equity jurisdic tion in England at the time when the federal Constitution was adopted, it is plain would not be subject to the objection that it was an invasion of the field of criminal law and involved intereference with the right of trial by jury. The jurisdiction of the courts of equity, and by implication their right to punish for contempt, are established by the Constitution, equally with the right of trial by jury, and so long as there is no attempt to extend jurisdiction over subjects not properly cognizable in equity, there can be no ground for the objection that the right of jury trial has been taken away or impaired. The same act may constitute a contempt and a crime. But the contempt is one thing, the crime another, and the punishment for one i not a duplication of the punishment of the other. The contempt can be tried and punished only by the court, while the charge of crime can be tried only by a jury. The first and fourth sections of the act of July 2, 1890, U. S. Statutes, 209, read as fol-

"Section 1-Every contract, combination n the form of trust or otherwise, or conspiracy, in restraint of trade or commercial among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. 'Section 4-The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violaions of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-general. to institute proceedings in equity to pre-vent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise rohibited. When the parties con of shall have been duly notified of such petition the court shall proceed, as soon as nay be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time muke such temporary restraining or-der or prohibition as shall be deemed just premises. It is not contended that other sections bear materially upon the construction or interpretation of these except the sixth, to

in the which reference will be made further along. The position of the defendants in respect to this statute, as stated in one of the riefs, is that it "is directed at capital; at dangers very generally supposed to result from the vast aggregations of capital; hat "the evil aimed at is one of a contractural character, and not of force and vio-lence" In another brief it is said more definitely: "That Sections 1 and 6 being construed together, it is apparent that the statute is aimed at monopoly of trade or commerce by which trade should be engrossed, and in and by which property should be employed and secured. But that even should this contention be denied, still the statute does not confer a right on the government to proceed under the direction of the Attorney-general to abate a pub nuisance existing in a highway of inter-state commerce, but generally by Section 4

prevent and restrain, by injunction, violations of a penal statute. It is thought. therefore, that, as held by Judge Putnam, in United States vs. Patterson, 55 Fed. Rep., 605, that this act is inapplicable; but if it is, then it is unconstitutional as an attempt to enforce a penal statute in equity, and not a justifiable authority for a proceeding familiar to equity, and, under congressional authority, admissible in the federal courts in the name of the govern-

INTENT OF CONGRESS.

The very elaborate arguments presented

same, in the main, as were made and reported at length in the case referred to, Patterson vs. United States, and, therefore, need not be restated. Reference was made in that case and has been made in this to the debates in Congress, while the measure was under consideration in that body, and, though it is conceded that we cannot take the views or purposes expressed in debate as supplying the construction of statutes, it is said we may gather from the debates in Congress, as from any other source "the history of the evil which the legislation was intended to remedy." Doubtless, that is often true; and in this instance it is apparent that the original measure, as proposed in the Sen-ate, "was directed wholly against trusts and not at organizations of labor in any form;" but it also appears that before the bill left the Senate its title had been changed and material additions made to its provisions; and it is worthy of note that a proviso to the effect that the act should not be construed to apply "to any arrangements, agreements or combinations made between laborers with a view to lessening the number of hours of labor or of increasing their wages, nor to any arrangements, agreements or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural or horticultural products, was not adopted. Such an amend ment doubtless was not necessary in order to exclude agreements and arrangements of the kind mentioned but the offering of the shows that the possible application of the statute to cases not in the nature of trusts or monopolies, and in which workmen or farmers should be concerned, was not overlooked. But it is more significant that, upon the introduction of the bill into the House, the chairman of the judiciary committee, as reported in the Congressional Record, Vol. 21, part 5, p. 4089, made the following statement: "Now, just what contracts, what combinations in the form of trusts, or what conspiracies will be in restraint of trade or commerce, mentioned in the bill, will not be known until the courts have construed and interpreted this provision." It is, therefore, the privilege and duty of the court, uncontrolled by conrations drawn from other sources, to find the meaning of the statute in the terms

of its provisions, interpreted by the settled rules of construction. That the original design to suppress or combination in the form of trust, which of course would be of a "contractual character." was adhered to, is clear; but it is equally clear that a further and more comprehensive purpose came to be enter-tained and was embodied in the final form of the enactment. Combinations are conemned not only when they take the form of trusts but in whatever form found, i they be in restraint of trade. That is the effect of the words "or otherwise." may be that those words should be deemed to include only forms of like character, hat is to say, some form of contract as distinguished from tort, but if that be se t only emphasizes and makes imperative the inference which otherwise it seems to me would be sufficiently clear, that the word "conspiracy" should be interpreted ndependently of the preceding words. It is hardly to be believed that the words "or otherwise" were used simply for the purpose of giving fuller scope to the antacedent words "contract" and "combination." and then "conspiracy" added merely for

the same purpose. LITERAL MEANING OF THE ACT. Construed literally the terms used in the body of this act forbid all contracts cr combinations in restraint of trade or commerce, but that construction is controlled by the title, which shows that only unlawful restraints were intended. But what constitutes an unlawful restraint is not defined, and under the familiar rule that such federal enactments will be interpreted by the light of the common law, I have no doubt but that this statute in so far as it s directed against contracts or combinations in the form of trust, or in any form of a "contractual character," should be limted to contracts and combinations such, in their general characteristics, as the courts have declared unlawful. But to put any such limitation upon the word conspiracy s neither necessary nor, as I think, pernissible. To do so would deprive the word f all significance. It is a word whose meaning is quite as well established in the law as the meaning of the phrase "in restraint of trade" when used, as commonly if not universally has been that phrase used, in reference to contracts. A conspiracy, to be sure, consists in an agreement to do something, but in the ense of law, and therefore in the sense of this statute, it must be an agreement between two or more to do by concerted action something criminal or unlawful, or, may be, to do something lawful by crimnal or unlawful means. A conspiracy, therefore, is in itself unlawful, and in so far as this statute is directed against conspiracles in restraint of trade among the several States, it is not necessary to look for the illegality of the offense in the kind of restraint proposed; and, since it would be unnecessary, it would be illogical to conclude that only conspiracies which are founded upon or are intended to be accomolished by means of contracts or combinaions in restraint of trade are within the purview of the act. It would be to make tautologous words which have distinctly different meanings, and to deprive the statute in a large measure of its just and

needful scope. Any proposed restraint of trade, though it be in itself innocent, if it is to be accomplished by conspiracy, is unthe phrase "in restraint of trade" and the phrases "to injure trade." "to restrain trade." Though perceptible, the distinction does not seem to me so significant that the use of one expression rather than the other should vary the interpretation of this statute. Any contract, combination or conspiracy to be "in restraint of trade" must involve the use of means of which the effect is "to injure" or "to restrain" trade. A contract, combination or conspiracy in restraint of trade is therefore a contract. combination or conspiracy to restrain or to injure trade. It would not, I suppose, be enough in an indictment to charge a conspiracy in restraint of trade, in the ianguage of the statute, but it would be necessary, unless the proposed restraint be shown to be in itself unlawful, to allege the illegal means intended to be used in order to effect the restraint, and whether the means should be averred to have been used "in restraint of" or "to restrain" trade could hardly be important. IN REGARD TO USE OF WORDS. There are many cases, doubtless, in which

the rule that every word of a statute should

be given effect is inapplicable, because when synonymous words are used the court is powerless to give them different meanings; but when words of different significance are employed the rule forbids that the scope of the statute be compressed within the limits of the narrower word. "Drinking house" and "tippling house" are necessarily one, and it was well held in Reg. vs. Mc-Cully, 2 Moody Cr. Cas. 34, that "ram, ewe, sheep and lamb" were all covered by the word "sheep;" but if the words had been "ram, ewe or sheep" it would have been a plain violation of the rule to reject the comprehensive word "sheep" and say that lambs or wethers were not included. (Gelpcke vs. City of Dubuque, 1 Wall, 220; Farrell vs. Martindale, 2 Cranch, 10, 337; United States vs. Coomps, 12 Peters, 72; Maillard et al. vs. Lawrence, 16 How., 248.) And it is no more legitimate here to reject the word conspiracy, or, what is practically the same thing, strip it of its wellsettled oriminal significance, by confining it within forms of contract, or of combinations in the form of trusts. For like reasons I am unable to regard the word "commerce," in this statute, as synonymous with "trade," as used in the common law phrase, "restraint of trade, In its general sense trade comprehends every species of exchange or dealing, but its chief use is "to denote the barter or purchase and sale of goods, wares and merchandise, either by wholesale or retail. and so it is used in the phrase mentioned But commerce is a broader term. It is the word in that clause of the Constitution by which power is conferred on Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." In a broader and more distinct exercise of that power than ever before asserted Congress passed the enactments of 1887 and 1888 known as the interstate-commerce law. The present statute is another exercise of that constitutional power, and the word commerce as used in the statute, as it seems to me, need not and should not be given a meaning more restricted than it has in the Constitution. That meaning has often been defined by That meaning has often been defined by the Supreme Court. (Gibbons vs. Ogden, 9 Wheat., 195, 197; Gilman vs. Philadelphia, 3 Wall., 713; The Daniel Ball, 10 Wall., 557; the case of the State Freight Tax, 15 Wall., 232, 275; Pensacola Tel. Co., vs. West, etc., Tel. Co., 96 U. S., 12 Ex Parte Selbold, 100

ball, 102 U. S., 691; Wabash, etc., Ry. vs. Illinois, 118 U. S., 569; Cherokee No. Vs. Kan. Ry. Co., 135 U. S., 641, 657.) I quote passages which will serve incidentally to dispose of a number of poles raised in the course of the argument without referring to them more directly. "The power of Congress," said Chief Justice Marshall, in Gibbons vs. Ogden, in 1824, when railroads were unknown, "comprehends navigation within the limits of every State in the Union, so far as that navigation may be, in any manner, connected with commerce with foreign nations, or among he several States or with the Indian in support of these propositions are the In Gilman vs. Philadelphia it is The power to regulate commerce

rehends the control for that purpose and to the extent necessary of all the navig-able waters of the United States which are accessible from a State other than those on which they lie. For this purpose they are the public property of the nation and subject to all the requisite legislation of Congress. This necessarily includes the power to keep them open and free from any obstruction to their navigation interposed by the States or otherwise. . . It is for Congress to determine when its full power shall be brought into activity and as to the regulations and sanctions which shall be provided."

COMMERCE BETWEEN STATES. In the case of the Daniel Ball, a steamer employed on Grand river, between Grand Rapids and Grand Huron, Mich., Justice Field, speaking for the court, said: "So far as the steamer was employed in transporting goods destined for other States or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States and however limited that commerce may have been she was, so far as it went, subject to the legislation of Congress. She was employed as an in-strument of that commerce, for whenever commodity has begun to move as an article of trade from one State to another commerce in that comodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. The extent in which such agency acts in that transportation it is subject to the regulation of Congress.' In the State freight tax case, Justice Strong said: "Beyond all question, the transportation of freight or of the subects of commerce, for the purpose of exchange or sale, is a constituent of com-merce itself This has never been doubted, and probably the transportation of articles of trade from one State to another was the prominent idea in the minds of the framers of the Constitution when to Congress was committed the power to reguate commerce among the several States A power to prevent embarrassing restrictions by a State was the thing desired The power was given by the same words, and in the same clause, by which was conferred power to regulate commerce with foreign nations. It would be absurd to suppose that the transmission of the subjects of trade from the State to the buyer, or from the place of production to the market was not contemplated, for without that there could be no consummated trade either with foreign nations or among the States. In his work on the Constitution (Section 1057), Judge Story asserts that the sense in which the word 'commerce' is used in that instrument includes not only traffic but intercourse and navigation. And in the passenger cases (7 Howard, 416) it was said: 'Commerce consists in selling the superfluity, in purchasing articles of neces-sity, as well productions as manufactures. in buying from one nation and selling another, or in transporting the merchan-dise from the seller to the buyer to gain the freight. Nor does it make any difference whether this interchange of commodities is by land or by water. In either case the bringing of the goods from the seller to the buyer is commerce. In Pensacola Telegraph Co. vs. West, etc., Tel. Co., Mr. Chief Justice Walte, speaking for the court, after reciting the provisions of the Constitution, says: powers thus granted are not confined to the instrumentalities of commerce or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stagecoach, from the sailing vessel to the steam-

dission of intelligence are not obstructed or unnecessarily hindered by State legislation. POWER OF CONGRESS. In County of Mobile vs. Kimball, in reference to the power of Congress over the subject, it is said: "That power is indeed without limitation. It authorizes Congress to prescribe the conditions which commerce in all its forms shall be conducted between our citizens and the citizens or subjects of other countries, and between the citizens of the several States, and to adopt measures to promote its

boat, from the coach and the steamboat

to the railroad, and from the railroad to

the telegraph, as these new agencies are

successively brought into use to meet the

demands of increasing population and wealth. They were intended for the gov-ernment of the business to which they re-

late, at all times and under all circum-

Nation, it is not only the right, but the

duty of Congress to see to it that inter-

course among the States and the trans-

government for the good of

stances. As they were intrusted

growth and insure its safety. In Wabash Ry. Co. vs. Illinois, Justice Miller, in the course of an exhaustive discussion, says: "It cannot be too strongly insisted upon that the right of continued transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the State might choose to mpose upon it, that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. (Cook vs. Penusyivania, 97 U. S. 566, 574; Brown vs. Maryland, 12 Wheat. 446.) And it would be a very leable and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was emed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transporation must be done could unpose regulations concerning the price, compensation barrassing this commerce.

or taxation, or any other restrictive regulation interfering with and seriously e.n-Speaking by the same judge, in ex parte Siebold, the court had said "We hold it to be an incontrovertible principle that the government of the United States may, by means of physical force exercised through its official agents, execute on very foot of American soil, the powers and functions that belong to it. "his necessarily involves the power to comment obedience to its laws, and have the power to keep the peace to that extent. This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same ime. In that case, the words of the Constitution itself show which is to yield. This Constitution and all laws which shall be made in pursuance thereof . . . shall be the supreme law of the land. The government must execute its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as on persons.'

JUSTICE HARLAN'S VIEWS. In Cherokee Nation vs. Kansas Railway Company, the court, speaking by Mr. Justice Harlan, says:

"Congress has power to regulate commerce, not only with foreign nations and among the several States, but with the Indian tribes. It is not necessary that an act of Congress should express, in words, the purpose for which it was passed. The court will determine for itself whether the means employed by Congress have any relation to the powers granted by the Constitution. The question is no longer an pen one, whether a railroad is a public nighway, established primarily for the convenience of the people, and to subserve public ends, and, therefore, subject to governmental control and regulation.' These definitions and expositions of the scope and 'aw of interstate commerce, except the last, preceded the enactments by Congress on the subject. It was, therefore, of commerce so defined, embracing all instrumentalities and subjects of transportation among the States, that Congress, by that legislation, assumed the control; and I see no reason for thinking that as employed in the act of 1890, which is essen tially supplemental of the other acts, the word was intended to be less compre-It has been decided in a number of cases

in the circuit courts, and in one instance by a Circuit Court of Appeals, that this act cannot be applied to trusts or monopo-lies in the manufacture or production of articles of commerce. For instance, in Greene's Case, 52 Fed. Rep., 104, Justice Jackson held that Congress had not the constitutional power, and by this act had not attempted to limit the right of a corporation, created by a State, in the acquisi-tion, control and disposition of property in the several States, even if carried to the extent necessary for the control of traffic in a species of property among the several States. To the same effect was the ruling

affirmed by the United States Circuit Court of Appeals for the Third circuit. (6) Fed. Rep., 306, 934. This case is pending, on appeal, in the Supreme Court. See also Dueber Watch Case Company vs. E. Howard & Co., 55 Fed. Rep., 851.) If these decisions are right, it follows that the act in question has relation only to commodities and persons in the course of movement among the States, and to the agencies or means of transportation, and if, as is contended, and as seems to have been decided in United States vs. Patterson, supra, it covers only contracts, com-binations or conspiracies, "intended to en-gross or monopolize the market, it is an act of very narrow scope. Why should it not be construed to embrace all conspira-cies which shall be contrived with intent, or of which the pressure effect shall be or of which the necessary effect shall be, to restrain, hinder, interrupt or destroy interstate commerce? The argument to the contrary drawn from the sixth section of the act is not controlling, nor, as it seems to me, even strongly persuasive. That section provides for the forfeiture of "any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in this act, and being in the course of transportation from one State to another. or to a foreign country;" but it does not say nor imply that only cases, whether of contract, or combination, or conspiracy, in which property shall be found subject to forfeiture, shall be deemed to come within the scope of this act. The force of the section is the same, I think, as if it read: "If in any case there shall be found any property owned, etc., it shall be forfeited," etc.; and so read it neither expresses nor implies any limitation of the provisions of other sections.

FALSE ASSUMPTION.

At this point is interposed the constitutional of jection, which, it is urged, forbids a construction that goes beyond trusts and monopolies to include conspiracies to employ force or violence in restraint of trade or commerce. The argument was employed and amplified in the Patterson case, 55 Fed. Rep. 605, 629-632. It was contended there "that if two or more persons commit an act of murder, robbery, forgery, shopbreaking, store-burning, champerty or maintenance, which in fact has a natural, although unintended result of interference with interstate commerce, they are liable criminally for a conspiracy to interfere with interstate commerce, if the statute broadly covers conspiracy merely to inter-fere with it." This proposition is built on the assumption which I believe is supported neither by authority nor reason, that co-conspirators are responsible as conspirators for the natural though unintended results of the commission or attempt by one of them to commit the particular offense originally agreed upon or intended. of law and of social order, that all engage in the commission of a particular crime, whether as counsellors, aiders, abetters, or otherwise, are individually responsible criminally for other offenses which result naturally from the commission or attempt to commit the crime intended, but as agreement and intent are of the essence of a conspiracy, a conspiracy to commit a particular offense can hardly be deemed to include another conspiracy to commit another offense, unless the latter was the necessary result or to such a degree the probable result of the commission or attempt to commit the crime intended that it could itself be charged in the indictment to have been intended But if it were possible by a course of technical reasoning and refinement to extend the law of conspiracy to all crimes known to the law where two or more per-

sons are implicated it would, as Judge Putnam held, not involve the constitutionlity of this act, which is limited to the field of interstate commerce, where the power of Congress is unrestricted and su-THE FOURTH SECTION.

The question here, however, is of the validity of the fourth, rather than of the first, section of the act. It is urged that the power given by that section "to prevent and restrain violations" of the act is an unwarranted invasion of the right of trial by jury, and in support of the proposition are cited: Puterbaugh vs. Smith, 131 Ill., 193; Carleton vs. Rugg, 149 Mass., 560, 557; Littleton vs. Fritz, 65 Ia., 488; Eilenbecker vs. Plymouth County, 134 U. S., 3; Scott vs. Neely, 140 U. S., 106; Pearson vs. Yewdall, 95 U. S., 244; Boyd vs. United States, 116 U. S., 616, 634; Counselman vs. Hitchcock, 142 U. S., 547, 582. Little need be added to what has already been said upon that subject. The same act may be assault or murder be committed in the presence of a court the offender will be punishable both for the crime and for the contempt, and so with any other act com-mitted in violation both of a criminal statute and of an injunction or order of court. Within the proper subjects of equitable cognizance, as established when the Constitution was adopted, it was competent for Congress to vest the courts with the jurisdiction granted by this section and to impose upon them the duty of its exercise in proper cases. Just as in construing the first section of the act by its general words are limited by force of the title to unlawrestraint, and the words "in restraint of trade," in their connection with the words "contract" and "combination" are to be given their common law significance, so the jurisdiction in equity though given in broad and general terms will be deeme to be limited so as not to extend to a case which is not of equitable cognizance. Inlegitimately be used in aid of the construction of the first section, the fourth section warrants, if it does not require, that the first section be restricted to cases in which, in accordance with established precedent an injunction could issue, a limitation which would not be essentially uncertain or of difficult application, and which, if necessary, to the upholding of the statute, might That this case is one of equitable character is clear, and, as I understand, has

not been questioned by counsel-their connor upon general principles is the case within the jurisdiction of a federal court. Ex cepting the case of U. S. vs. Patterson, I know of no ruling inconsistent with the jurisdiction here exercised. The case United States vs. Transmissouri Freight Association, 53 F. R., 440, S. C., 58 F. R., 58 had reference to a contract between rail-roids, which was alleged to have been made in violation of the act, but was held to be not un'awful. In the case of United States vs. Workingmen's Amalgamated Council, of New Orleans, 54 F. R., 494, the late Judge Billings, under this statute, granted an injunction upon facts which made the question of jurisdiction the same as it is here,

and in respect to that question his ruling and opinion were distinctly approved by the Circuit Court of Appeals for the Fifth circuit, 57 F. R. 85. The court said: "The appellants assign as error the overruling by the Circuit Court of each of the grounds of objection urged in that court against the granting of said injunction. These are well summarized, discussed and disposed or in the very able opinion of the judge of the Circuit Court, who passed the decree now sought to be reversed. The matters of law presented to and considered by him were not well taken by the appellants, respond-dents below, and the Circuit Court's rul-ing to that effect was correct. The bill exhibited is clearly within the statute and the pleadings of the respondents were not such as to require the refusal of the prayer for a temporary injunction." See also the opinion of Judge Speer in Waterhouse vs. Comer, 55 F. R., 149.

CASE OF PHELAN. In the case of Phelan, who was charged with contempt of the United States Circuit Court, at Cincinnati, growing out of the strike of last summer and involving facts essentially identical with the facts of this case, Judge Taft declared that combination to be "in the teeth of the act of July 2, 1896," and, after quoting from the act and referring to the rulings of other judges in accord with his own view, said: "A different view has been taken by Judge Putnam in the case of the United States vs. Patterson, 55 Fed. Rep. 605, but after consideration, Judge Lurton and cannot concur with the reasoning of that learned judge. The fact that it was the purpose of Debs, Phelan and their assoclates to paralyze the interstate commerce of this country is shown conclusively in this case and is known of all men. Therefore, their combination was for an unlawful purpose and is a conspiracy within the statute cited." The facts of this case suggest Illustra-

tions of the impropriety as well as inconsistency of putting upon the statute the restrictive construction proposed. If, for example, the manufacturers of other sleeping cars, in their own interest should enlist the brakemen and switchmen or other employes of the railroads, either individualy or in associated bodies, in a conspiracy to prevent or restrain the use of Pullman sleepers by refusing to move them, by secretly uncoupling or by other clusive means, the monopolistic character of the conspiracy would be so evident that, even on the theory that the statute is aime at contracts or combinations intended in engross or monopolize the market, it would be agreed that the offense ought to be punishable. But if in such a case the officers or agents of the car companies, who might or might not be capitalists. would be individually responsible for violating the statute, upon what principle could the fireman or switchman be exempt? Can workingmen, or, if you will, poor men, acting